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The SEC's action against municipal underwriting firms

The SEC issued a press release and 36 related enforcement orders on June 18, 2015, in connection with its Municipalities Continuing Disclosure Cooperation (MCDC) initiative. All governmental and non-profit issuers, bankers, municipal advisors and other participants in the municipal finance industry should take notice of this information.

Summary of press release:

The SEC took action against 36 municipal underwriting firms for violations in municipal bond offerings. The cases are the first brought against underwriters under the MCDC initiative itself, a voluntary self-reporting program initiated by the SEC targeting material misstatements and omissions in municipal bond offering documents.

As stated in the press release, "The MCDC initiative has already resulted in significant improvements to the municipal securities market, including heightened awareness of issuers' disclosure obligations and enhanced disclosure policies and procedures," said SEC Chair Mary Jo White. "This ongoing enforcement initiative will continue to bring lasting changes to the municipal securities markets for the benefit of investors."

The SEC alleged that between 2010 and 2014 the 36 firms violated federal securities laws by selling municipal bonds using offering documents that contained materially false statements or omissions about the bond issuers' compliance with continuing disclosure obligations, arising out of undertakings under SEC Rule 15c2-12. The underwriting firms also allegedly failed to conduct adequate due diligence to identify the misstatements and omissions before offering and selling the bonds to their customers.

The SEC advised that continuing disclosure provides municipal bond investors with information, including annual financial reports, on an ongoing basis. It cited its 2012 [Municipal Market Report](#) which described issuers' failure to comply with their continuing disclosure

obligations as a major challenge for investors seeking information about their municipal bond holdings.

All 36 firms agreed to cease and desist from such violations in the future and they will pay civil penalties up to a cap of \$500,000. In addition, each firm agreed to retain an independent consultant to review its policies and procedures on due diligence for municipal securities underwriting.

How Late is Too Late?

One interesting fact is highlighted by the following two examples of types of violations of disclosure agreements made by issuers:

- A 2013 negotiated securities offering in which an issuer made no statement regarding its prior compliance and thereby failed to disclose that it had filed two years' worth of certain required financial and operating information **between 16 and 76 days late**, failed to file other required financial information for the same two years, and failed to file required notices of late filings for each of those; and
- A 2012 negotiated securities offering in which an issuer failed to disclose that it had filed its audited financial statements for three years **between 14 and 94 days late**, failed to file its audited financial statement for one year, and failed to file required notices of late filings for each of those.

We have been asked by clients how late is too late; i.e., how late is materially late for purposes of SEC Rule 15c2-12? These orders indicate that in the opinion of the SEC, a filing of financial information as little as 14 or 16 days late may – when viewed in the overall context of other violations, like failing to disclose and file notices of failure to file – be deemed by the SEC as materially late.

Many attorneys and advisors may disagree and at least suggest that being only 14 to 16 days late in making a filing is in fact not materially late in many circumstances, but it's useful to know what was found by the SEC and agreed to by at least two underwriting firms.

To read the June 18 SEC press release in full, [click here](#).

For more information, please contact [David Rogers](#) or any other attorney on Frost Brown Todd's [Public and Project Finance](#) service team.

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